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May 11, 2012

Mr. Steve Cliff, Chief  
Climate Change Program Evaluation Branch  
California Air Resources Board  
1001 "I" Street  
Sacramento, California 95812

Dear Mr. Cliff:

Subject: Los Angeles Department of Water and Power (LADWP) – Informal Comments on the California Air Resources Board (CARB) Workshop to Discuss Requirements for First Deliverers of Electricity in the Cap and Trade Program held May 4, 2012

The LADWP appreciates the opportunity to provide comments on the topics discussed at the May 4 workshop on cap-and-trade program compliance requirements for first deliverers of electricity. In particular, LADWP is commenting on the following issues:

- First Deliverer
  - Definitions of "Electricity Importer" and "Specified Source of Electricity"
  - Clarification of written power contract
- Resource Shuffling
- Qualified Exports

#### First Deliverer-Related Issues

##### \$95802. Definition of Electricity Importer

During the second 15-day modifications to the Cap-and-Trade Program regulation (September 12, 2011), the definition of "Electricity Importer" was changed such that the responsibility for reporting electricity imports changed from the entity that "holds title to" the power to the entity that physically delivers the electricity into California. In addition, CARB added a new sentence making the facility operator or scheduling coordinator responsible for reporting electricity imports from generating facilities located outside of California that have a first point of interconnection with a California Balancing Authority. These revisions were significant in that they changed the entity responsible for reporting electricity imports, and hence the point of regulation and greenhouse gas emissions responsibility, since the entity who reports the electricity import is also responsible for paying the cap-and-trade compliance obligation and AB 32 Cost of Implementation fees for that imported electricity.

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As CARB noted in its presentation at the May 4 workshop, stakeholders have expressed concern about incurring a compliance obligation when they are acting as an agent on behalf of another electric power entity. As a balancing authority, LADWP serves as a "scheduling agent" (which is different than a "scheduling coordinator" which is a term unique to CAISO) that facilitates electricity imports scheduled by Glendale Water and Power (GWP) and Burbank Water and Power (BWP) from Intermountain Generating Station (Intermountain).

Based on the current rule language, it is unclear if LADWP would be identified as the electricity importer for electricity that is owned and imported into California by GWP and BWP. This definition needs to be clarified to avoid the unintended consequence of a balancing authority having to report emissions, surrender emission allowances and pay AB 32 fees for electricity belonging to another entity, and the compliance confusion and lack of transparency that would result.

LADWP supports modifying the definition of "electricity importer" to create a hierarchy for determining responsibility for imported electricity as follows:

- 1) the purchasing-selling entity listed on the NERC e-tag
- 2) the scheduling coordinator
- 3) the facility operator

Proposed Amendment to §95802 Definition (87)

"Electricity Importers" are marketers and retail providers that deliver imported electricity. ~~For electricity delivered between balancing authority areas, the~~ The electricity importer is identified on the NERC E-tag as the purchasing-selling entity (PSE) on the last segment of the tag's physical path with the point of receipt located outside the state of California and the point of delivery located inside the state of California. In the absence of a NERC e-tag, the electricity importer is the scheduling coordinator or the facility operator. ~~For facilities physically located outside the state of California with the first point of interconnection to a California balancing authority's transmission and distribution system, the importer is the facility operator or scheduling coordinator.~~ Federal and state agencies are subject to the regulatory authority of ARB under this article, and include Western Area Power Administration (WAPA), Bonneville Power Administration (BPA) and California Department of Water Resources (DWR).

In addition, if CARB is planning to rely on e-tags to determine who is responsible for the compliance obligation for imported electricity, a standard protocol for generating e-tags should be implemented to ensure that everyone is following the same set of rules. As it currently stands, there is a great deal of leeway in how e-tags are written. LADWP recommends that CARB participate in the NERC e-tag design committee and provide input to ensure that information on the e-tags is consistently and appropriately recorded. The purpose of the NERC e-tag is to ensure reliability in the bulk power system and therefore could be changed at any time to meet specific needs of the bulk power system. Thus, CARB's use of the NERC e-tag as the primary means to determine who is responsible for the compliance obligation could result in complications with respect to determining the first deliverer.



Specified Source of Electricity

During the May 4 workshop, CARB staff stated that it would clarify in a guidance document for the mandatory reporting regulation the definition of written power contract. Since that term is used but not defined in the cap-and-trade regulation, guidance on what constitutes a written power contract may help in clarifying entity implementation of the cap-and-trade regulation. For example, the definition of "specified source of electricity" or "specified source" contains reference to a written power contract in the cap-and-trade regulation:

"Specified source of electricity" or "specified source" means a facility or unit which is permitted to be claimed as the source of electricity delivered. The reporting entity must have either full or partial ownership in the facility/unit or a written power contract as defined in MRR section 95102(a) to procure electricity generated by that facility/unit...

In addition, Section 95852(b)(3) refers to written power contracts when it states that electricity imports based on an emission factor less than the default emission factor (renewable, nuclear, large hydroelectric) must include ownership or contract rights as follows:

"(3) The following criteria must be met for electricity importers to claim a compliance obligation for delivered electricity based on a specified source emission factor less than the default emission factor:

- (A) Electricity deliveries must be reported to ARB and emissions must be calculated pursuant to MRR section 95111.
- (B) The electricity importer must be the facility operator or have right of ownership or a *written power contract* [emphasis added], as defined in MRR section 95102(a), rights to the amount of electricity claimed and generated by the facility or unit claimed;
- (C) The electricity must be directly delivered, as defined in MRR section 95102(a), to the California grid..."

As noted in CARB's presentation at the workshop, stakeholders such as LADWP have expressed concern that the interpretation of the definition of "written power contract" in the mandatory reporting regulation could result in the assignment of default emissions in circumstances where the first deliverer that is scheduling the power into California on behalf of another party assumes responsibility as the first deliverer, and therefore must include such imports in their Electric Power Entity report. However, the entity scheduling and/or importing the electricity under this scenario may not have ownership in the facility or a written power contract to procure the electricity being imported. This could result in the unintended consequence of assigning default emissions to electricity that is directly delivered from zero emission generating facilities.

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LADWP recommends that CARB clarify the definition of "written power contract" to include the following:

- Import of electricity on behalf of an entity that has right of ownership or contract to procure electricity generated by that facility/unit.
- In the case of a transmission outage, imported electricity from a specified source that is re-routed on a different transmission pathway may be reported as coming from a specified source if the reporting entity has an arrangement, such as a Mutual Assistance Transmission Agreement, to import that electricity on behalf of an entity that has right of ownership or a contract to procure the electricity.

Although CARB has indicated its desire to address the written power contract issue in guidance, LADWP believes that the following minor rule amendments could address the issue:

**Proposed Amendment to §95802 Definition (264)**

(264) "Specified Source of Electricity" or "Specified Source" means a facility or unit which is permitted to be claimed as the source of electricity delivered. The reporting entity must have either full or partial ownership in the facility/unit, or a written power contract as defined in MRR section 95102(a) to procure electricity generated by that facility/unit, or import the electricity on behalf of an entity that has full or partial ownership in the facility/unit or a written power contract to procure electricity generated by that facility/unit. Specified facilities/units include cogeneration systems. Specified source also means electricity procured from an asset controlling supplier recognized by ARB.

**Proposed Amendment to §95852(b)(3)(B)**

(B) The electricity importer must be either:

- 1) The facility operator, or have right of ownership, or a written power contract (as defined in MRR section 95102(a)) to the amount of electricity claimed and generated by the facility or unit claimed; or
- 2) Import the electricity on behalf of a California entity that has right of ownership or a written power contract to the amount of electricity claimed and generated by the facility/unit.

**Resource Shuffling**

LADWP agrees that deliveries of emergency power should not be considered resource shuffling. As discussed in previous comments on the cap-and-trade regulation, there are instances where covered entities would need to provide mutual assistance in emergency scenarios. LADWP was concerned that a covered entity would be forced to choose between providing mutual assistance during an emergency situation or staying in compliance with the resource shuffling provision.



At the May 4 workshop, CARB stated its intent to keep the current language with respect to resource shuffling, provide limited guidance, and work with stakeholders to make determinations of resource shuffling on a case-by-case basis. LADWP understands CARB's concern with respect to emissions leakage and its desire to drive investment in cleaner technology and the fact that it is difficult to develop an amended definition of resource shuffling that accounts for all possible types of resource shuffling. However, in the case of early divestiture of a high emitting generating resource, LADWP recommends clarification in the rule or guidance to provide certainty that divestiture does not constitute resource shuffling, as divestiture involves major financial decisions and long-term resource planning to replace one generating resource with a cleaner resource.

LADWP recommends the following rule amendment:

"Resource Shuffling" means any plan, scheme, or artifice to receive credit based on emissions reductions that have not occurred, involving the delivery of electricity to the California grid, excluding activities related to resource divestiture.

LADWP requests that CARB provide clarification on what does / does not constitute resource shuffling prior to the due date for submitting entity resource shuffling attestations.

#### **Qualified Exports**

At the workshop, CARB presented four options to address the Qualified Exports (QE) adjustment in Section 95852(b)(5), ranging from elimination of the QE adjustment to amending this provision. The QE provision needs to be retained in order to properly account for electricity consumed in California in accordance with AB 32 sections 38505 and 38530 which directs ARB to account for greenhouse gas emissions from all electricity consumed in the state.

AB32 section 38505 (m) defines Statewide Greenhouse Gas Emissions as *"the total annual emissions of greenhouse gases in the state, including all emissions of greenhouse gases from the generation of electricity delivered to and consumed in California, accounting for transmission and distribution line losses, whether the electricity is generated in state or imported. Statewide emissions shall be expressed in tons of carbon dioxide equivalents."*

AB32 section 38530 (b)(2) says the ARB shall *"Account for greenhouse gas emissions from all electricity consumed in the state, including transmission and distribution line losses from electricity generated within the state or imported from outside the state. This requirement applies to all retail sellers of electricity, including load-serving entities as defined in subdivision (j) of Section 380 of the Public Utilities Code and local publicly owned electric utilities as defined in Section 9604 of the Public Utilities Code."*

The language in AB 32 clearly directs CARB to account for GHG emissions from electricity consumed in California regardless of where the electricity was generated, but not electricity that is exported and consumed outside of California.

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Without the QE provision, a compliance obligation would be imposed on power that is not consumed in California which is contrary to the direction given to CARB in AB 32. LADWP believes that exported electricity should not be ignored when it comes to AB32 compliance and believes that CARB should recognize and account for the fact that electricity both enters and leaves the state. LADWP agrees that amendments would be helpful to clarify this provision and therefore recommends that CARB continue working with stakeholders to develop amendments to this provision to meet the objective of AB 32.

If you have any questions or require additional information, please contact me at (213) 367-0403 or Ms. Jodean Giese at (213) 367-0409.

Sincerely,



Mark J. Sedlacek  
Director of Environmental Affairs

JMG:db

c: Ms. Claudia Orlando, CARB  
Mr. Greg Mayeur, CARB  
Ms. Mary Jane Coombs, CARB  
Mr. Bill Knox, CARB  
Mr. Mark J. Sedlacek  
Ms. Jodean M. Giese